

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:20-cr-00266-DGK-1
	)	
EARL PENN,	)	
	)	
Defendant.	)	

**MOTION TO CONTINUE JURY TRIAL**

Defendant, Earl Penn, by and through counsel, Lesley D. Smith, respectfully moves the Court pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (B) to remove this case from the Accelerated Joint Criminal Trial Docket scheduled to commence June 2021 and to continue this case until the Accelerated Joint Criminal Trial Docket scheduled to commence in August 2021.

**SUGGESTIONS IN SUPPORT**

In support, Defendant states to the Court:

1. On September 29, 2020, an indictment was filed charging defendant with violation of 18 U.S.C. 922(g)(1) and 924(a)(2).
2. On October 7, 2020 Mr. Penn was arraigned.
3. Mr. Penn is detained at CoreCivic detention center. In a recent conversation with Mr. Penn, undersigned counsel learned that Mr. Penn was in a cell next to a person that took his own life. Mr. Penn has expressed that this experience has been traumatic for him. Counsel has advised him to seek available

counseling at CoreCivic.

4. Counsel is requesting additional time in this matter to allow Mr. Penn to deal with the trauma and fully understand the nature and consequences of trial or a plea of guilt.

5. For these reasons, the ends of justice served by granting this continuance outweigh the best interest of the public and the defendant in a speedy trial. See 18 U.S.C. § 3161(h)(7). “[S]ubsection (h)(7) expressly accounts for the possibility that a district court would need to delay a trial to give the parties adequate preparation time.” *Bloate v. United States*, 559 U.S. 196, 213 (2010). “[A] district court may exclude preparation time under subsection (h)(7) if it grants a continuance for that purpose based on recorded findings ‘that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.’” *Id.* at 214. This subsection provides “[m]uch of the Act’s flexibility,” and gives district courts “discretion . . . to accommodate limited delays for case specific needs.” *Zedner v. United States*, 547 U.S. 489, 498–99 (2009). Those needs are present here.

6. Defendant, Earl Penn has been informed of the statutory right to a speedy trial, joins in this request to continue, and does not object to the tolling of speedy trial time during the requested period.

7. Counsel for the government does not object to this request.

**WHEREFORE**, Defendant respectfully requests that the Court remove this case from the Accelerated Joint Criminal Trial Docket scheduled to commence June 7, 2021

and to continue this case until the Accelerated Joint Criminal Trial Docket scheduled to commence August 16, 2021.

Respectfully submitted,

/s/Lesley D. Smith

Lesley D. Smith

Assistant Federal Public Defender

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**CERTIFICATE OF SERVICE**

In accordance with Rule 49(a), (b) and (d), Fed. R. Crim. P., and Rule 5(b), Fed. R. Civ. P., it is hereby CERTIFIED that on May 18, 2021, the foregoing motion was electronically delivered to all participants of the ECF filing system.

/s/ LESLEY D. SMITH

Lesley D. Smith